

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: Calderon Analyst: John Pavalasky Bill Number: AB X3 25
Related Bills: None Telephone: 845-4335 Introduced Date: August 21, 2008
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Tax Penalties Doubled

SUMMARY

This bill would double the civil tax penalties imposed under the tax laws administered by the Franchise Tax Board and the State Board of Equalization.

PURPOSE OF THE BILL

This bill states that this bill addresses the fiscal emergency declared by the Governor by proclamation on January 10, 2008, pursuant to the California Constitution.

EFFECTIVE/OPERATIVE DATE

Under paragraph (1) of subdivision (c) of Article IV of the California Constitution, a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed. This bill would apply to penalties imposed after the effective date, without regard to taxable year.

POSITION

Pending.

SUMMARY OF SUGGESTED AMENDMENTS

Amendments to resolve the implementation issue are attached.

ANALYSIS

This analysis is limited to the tax penalties administered by the Franchise Tax Board.

STATE LAW

The Franchise Tax Board administers Part 10.2 of the Revenue and Taxation Code entitled the Administration of Franchise and Income Tax Laws (AFITL). The AFITL imposes penalties and additions to tax for noncompliance with specified requirements. These penalties include both civil and criminal penalties. Civil penalties and additions to tax under the AFITL are imposed by the Franchise Tax Board under Article 7 of Chapter 4 (commencing with Section 19131), relating to penalties and additions to tax, and Chapter 9.5 (commencing with Section 19751), relating to tax shelters. Criminal penalties are imposed by the courts under Chapter 9 (commencing with Section 19701), relating to violations.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

Department Director**Date**

Selvi Stanislaus

9/02/08

THIS BILL

This bill would double the civil tax penalties imposed by the Franchise Tax Board under the AFITL. This bill would also provide that any maximum limitation that applies to any of these penalties would also be doubled. Additionally, this bill would provide that for these purposes “penalty” includes any addition to tax.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author’s office to resolve these and other concern(s) that may be identified.

The bill would increase the amount of penalties **imposed** after the effective date. However, there may be some ambiguity regarding when various penalties are **imposed**. The attached amendments would resolve this concern.

FISCAL IMPACT

This bill would not significantly impact the department’s costs.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, this bill would result in the following annual revenue gains beginning in fiscal year (FY) 2008/09.

Estimated Revenue Impact of ABX3-25 Effective for Tax Years BOA January 1, 2009 (\$ in Millions)		
2008-09	2009-10	2010-11
\$90	\$140	\$145

This analysis does not account for changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

The revenue impact of the bill would be dependent upon the amount of additional penalties collected.

Based on department data, we estimate \$450 million in civil tax penalties would be imposed in calendar year 2009. This estimate is then doubled to \$900 million to account for the doubling of civil tax penalties, as proposed by this bill. Based on historical data, approximately 50% of penalties are collected within 3 years of assessment. With the doubling of civil tax penalties, it is assumed that the collection rate will decrease to 40% or \$360 million (\$900 million x 40%) and that of this amount, approximately 15% or \$55 million (\$360 million x 15%) would be collected in the first FY, 2008-09. Under current law, it is estimated \$35 million would have been collected. Therefore, the net benefit of this proposal is estimated at \$20 million (\$55 million - \$35 million). It is assumed that an additional 50% of the collection of civil tax penalties assessed in 2009 will take place in FY 2009-10. Under this bill, collections in FY 2009-10 would be approximately \$180 million (\$900 million x 40% total collection percentage x 50%). Under current law, collections are estimated to be \$115 million. Therefore, the estimated net benefit from this bill in FY 2009-10 is \$70 million (\$180 million - \$115 million). These civil tax penalty collections are accrued back to FY 2008-09, resulting in a net impact for FY 2008-09 of \$90 million as shown in the table (\$70 million accrued from FY 2009-10 + \$20 million from FY 2008-09).

For the subsequent years, it is expected that the doubling of civil tax penalties will cause an increase in compliance, which will lead, over time, to an increase in self-compliance revenue and a decrease in penalty revenue. The net impact therefore is estimated to be \$140 million in FY 2009-10 and \$145 million in FY 2010-11.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO ABX3 25
As Introduced August 21, 2008

AMENDMENT 1

On page 2, line 33, after "year." insert:

For purposes of this section, a penalty is imposed on the date of a notice of proposed deficiency under Section 19033 reflecting the penalty or the date of the first notice and demand for payment of the penalty, whichever is earlier.

AMENDMENT 2

On page 3, line 8, after "year." insert:

For purposes of this section, a penalty is imposed on the date of a notice of proposed deficiency under Section 19033 reflecting the penalty or the date of the first notice and demand for payment of the penalty, whichever is earlier.